



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: APRIL 12, 2023

IN THE MATTER OF:

Appeal Board No. 627694

PRESENT: GERALDINE A. REILLY, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective July 14, 2022, on the basis that the claimant voluntarily separated from employment without good cause. The claimant requested a hearing.

The Administrative Law Judge held telephone conference hearings at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances on behalf of the claimant and the employer. By decision filed January 17, 2023 (), the Administrative Law Judge sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant worked as a deli clerk at a supermarket from April 2019 through July 13, 2022. The claimant obtained this employment through the employer's deli consultant. The deli consultant had his own company and was not an employee of the supermarket. The deli consultant visited the supermarket on a weekly basis, provided instruction to the claimant and other workers about how to conduct themselves and work at the supermarket, and provided the workers with their schedules. The deli consultant instructed the claimant to go through the deli consultant to resolve any issues that arose between the claimant and his managers at the supermarket. The only person who had the authority to discharge the claimant was the store supervisor. The deli consultant had no authority over hiring or

firing employees. The claimant's paycheck came from the supermarket he worked for.

On July 13, 2022, the claimant had a disagreement with the store's assistant manager. The assistant manager consulted the store's supervisor and, at 11:13 AM, told the claimant that the supervisor was directing him to punch out and go home. The claimant, whose primary language is Arabic, understood that he was being told to "banish out." He had never heard this expression before. He took out his phone to record the assistant manager and have her confirm that he was being banished.

Almost immediately afterward, the claimant called the deli consultant to let him know what had happened. The deli consultant said that the claimant was fired and that he should just go home. The claimant had a family to support. After he punched out, a customer found the claimant crying outside the supermarket. She asked why he was crying, and the claimant told her that, after three and a half years, he had been thrown out without any reason. The deli consultant called the claimant later that day and informed him of a job opportunity in New Jersey. The claimant did not pursue this possible new job because he was unable to commute to New Jersey.

The claimant was scheduled to return to work on Sunday, July 17. The claimant did not return to work that day because the deli consultant told him that he was fired and the employer was going to hire someone else.

The store supervisor did not communicate directly with the claimant at any time from the claimant's last day of work through the claimant's separation from employment. When the claimant did not return to work as scheduled, the employer decided that the claimant quit.

OPINION: The credible evidence establishes that the claimant's employment ended after the claimant was told to punch out and go home. The claimant, whose primary language is Arabic, understood that he was being told to "banish out" and that he was fired. In this regard, we find it significant that the claimant's conduct, both in attempting to record the assistant manager and in crying outside the supermarket, is consistent with this understanding. Also significant, the claimant called the deli consultant, as he had been instructed to do in the case of a conflict with management, and the deli consultant told him that he was fired and that he should go home, and later called the claimant to present him with a new job opportunity in New Jersey.

Although the store supervisor credibly testified that he intended to have the claimant sent home only for the day and that nobody had authority to discharge employees except himself, the employer has not presented any testimony or evidence to show that the claimant would have known he was not fired or that the deli manager was not an appropriate person to clarify the claimant's employment status. Further, as the deli manager did not testify, we have no first-hand witness to refute the claimant's credible testimony regarding what he was told. Under these circumstances, we find that the claimant reasonably believed he was fired. Therefore, we find that he did not quit. Accordingly, we conclude that the claimant's employment ended under non-disqualifying circumstances, and the claimant is allowed benefits.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determination, disqualifying the claimant from receiving benefits, effective July 14, 2022, on the basis that the claimant voluntarily separated from employment without good cause, is overruled.

The claimant is allowed benefits with respect to the issues decided herein.
(Al reclamante se le asignan beneficios con respecto a los temas decididos en el presente.)

GERALDINE A. REILLY, MEMBER